

EXHIBIT P

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3 *E-FILED 12/12/07*
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

9
10 FACEBOOK, INC., et al.,

NO. C 07-01389 RS

11 Plaintiffs,

12 v.

13 CONNECTU LLC., et al.,

14 **ORDER GRANTING MOTION
TO COMPEL SUPPLEMENTAL
INTERROGATORY RESPONSES
AND SETTING CASE
MANAGEMENT CONFERENCE**

15 Defendants.

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17 I. INTRODUCTION

18 Plaintiff Facebook, Inc. moves to compel defendants Pacific Northwest Software (“PNS”)
19 and Winston Williams to provide further responses to two interrogatories. PNS and Williams insist
20 they possess no further responsive information. The Court finds this matter suitable for disposition
21 without oral argument pursuant to Civil Local Rule 7-1 (b). For reasons explained below, PNS and
22 Williams have failed to demonstrate that they have made adequate efforts to respond fully to these
23 interrogatories, and the motion will therefore be granted. Additionally, the Court will set a case
24 management conference in this action for January 16, 2008.

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1 II. BACKGROUND¹

2 Interrogatory No. 3 requests PNS and Williams to identify all of the Internet Protocol (“IP”)
 3 addresses and Universal Resource Locators (“URLs”) they used or accessed to obtain any data from
 4 any Facebook website. The interrogatory further requests PNS and Williams to state the “purpose”
 5 of such use or access, and the dates it occurred. PNS responded that it has *no* knowledge that would
 6 enable it to answer, but that it believed Williams might. Williams responded by identifying three IP
 7 addresses that were used “to obtain data from thefacebook.com.”² Williams’ response did not
 8 include any dates.

9 Interrogatory No. 4 requests PNS and Williams to identify all instances when they sent
 10 emails to addresses obtained from Facebook, including identifying all such addresses of persons in
 11 California.³ Again, PNS stated that it lacked any responsive information, but suggested that
 12 Williams might have some. Williams, in turn, provided a response describing circumstances under
 13 which, in his understanding, emails would have been sent to Facebook members, but he did not
 14 provide information as to when or how many emails may have been sent.

15 At the time of the events at issue in this litigation, Williams was either an employee of, or
 16 independent contractor for, PNS. There appears to be no dispute, however, that Williams has done
 17 no work for PNS in over a year and does not currently have direct access to its computers or records.
 18 In deposition, Williams testified, among other things, that (1) he had accessed Facebook’s website
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20 ¹ The general background of this action has been described in prior orders and will not be
 21 repeated here.

22 ² Facebook’s argument that defendants failed to describe their “purpose” in accessing
 23 Facebook’s website is not persuasive, given Williams’ plain admission that he intended to “obtain
 24 data from thefacebook.com.” Accordingly, if the motion to compel had been based solely on that
 25 argument, there would be no basis to require a further response.

26 ³ These interrogatories were both served on PNS and Williams pursuant to the Court’s order
 27 permitting Facebook to conduct limited discovery on the issue of personal jurisdiction, after PNS
 28 and Williams moved to dismiss for lack of such jurisdiction. That motion to dismiss has since been
 denied. When granting leave to conduct jurisdictional discovery, however, the Court observed that
 such discovery likely could overlap with issues on the merits. Defendants do not suggest, and could
 not reasonably argue, that these two interrogatories have become moot in light of the jurisdictional
 ruling. Although the emphasis on *California* email addresses in Interrogatory 4 no longer has
 significant consequence, both Interrogatories seek information directly relevant to conduct alleged to
 have been wrongful.

1 from several computers with IP addresses other than those identified in the written responses, and
 2 (2) it “might” be possible to determine the number of emails sent to California addresses. In meet
 3 and confer correspondence before this motion was filed, however, Williams provided a declaration
 4 that he had subsequently reviewed certain electronic files provided to him by PNS, and that those
 5 files were not “helpful” in providing him any further information that would be responsive to the
 6 interrogatories at issue.

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III. DISCUSSION

9 Generally, a motion to compel does not lie where a party has taken the position that it simply
 10 does not possess any further responsive information. Rather, most often, the responding party will
 11 be held to that position, and the requesting party will be free to use that response as it sees fit in the
 12 course of the litigation. Occasionally, however, the record will support an inference that a party may
 13 not have made a sufficient effort to gather responsive information that may be in its possession.
 14 This is such a case.

15 As an initial matter, PNS’s attempt to disclaim any relevant knowledge appears to be an
 16 inappropriately evasive response, at least on the present record. Even though Williams is not
 17 working for PNS *now*, there is no suggestion that he was not the agent of PNS at the time of the
 18 events in dispute. PNS is obligated to make a reasonable investigation into its files and records to
 19 determine what Williams did during that time period. It is unclear whether PNS conducted *any* such
 20 inquiry before simply denying it had knowledge and pointing plaintiff to Williams. In particular, it
 21 seems unlikely that *no* record of Williams’s activities remains in PNS’s computer systems.

22 Additionally, it appears to be beside the point as to whether it is possible to identify the
 23 *California* email addresses to which emails may have been sent. Williams speculated at his
 24 deposition how that information might be compiled, but defendants argue that it simply cannot be
 25 done as a practical matter. Personal jurisdiction, however, is no longer the issue, and there is no
 26 particular need to segregate emails sent to California addresses from any sent elsewhere.
 27 Accordingly, it does not matter whether Williams was right or wrong about the feasibility of
 28 identifying emails sent to California addresses. Interrogatory No. 4 seeks data regarding *all* emails

1 sent to addresses that defendants obtained from Facebook's website. On the present record,
2 defendants' argument that they cannot provide more information as to what emails were sent to
3 addresses acquired from Facebook's website is not credible. Accordingly, the motion to compel is
4 granted.⁴ PNS shall undertake reasonable efforts to determine whether it possesses additional
5 information responsive to these interrogatories and, to the extent necessary, shall give Williams
6 access to its computer files and databases to permit complete discovery responses.

IV CONCLUSION

9 The motion to compel is granted to the extent set forth above. Further responses shall be
10 served within 20 days of the date of this order. The parties shall appear for a case management
11 conference in the action on January 16, 2008 at 2:30 p.m.

IT IS SO ORDERED.

Dated: 12/12/07


RICHARD SEEBORG
United States Magistrate Judge

⁴ Nothing in this order requires defendants to provide information that they genuinely do not possess. Thus, if for any reason, PNS's computer records do not contain additional responsive information, it may so state by way of a verified declaration. PNS, may not, however, simply point to Williams as a source of information.

United States District Court

For the Northern District of California

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

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Dated: 12/12/07

Richard W. Wiking, Clerk

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By: _____
Chambers

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C 07-01389 RS